

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7599

Joint Petition of Northern New England)
Telephone Operations LLC, Telephone Operating)
Company of Vermont LLC, d/b/a FairPoint)
Communications, Enhanced Communications of)
Northern New England, Inc., and FairPoint)
Vermont, Inc. (collectively, "FairPoint"), for (1))
approval of an indirect acquisition of a controlling)
interest; (2) approval of a Settlement between the)
Department of Public Service and FairPoint; (3))
approval of the modification of certain)
Certificates of Public Good issued in Docket)
7270; and (4) approval of certain other)
transactions)

Order entered: 4/2/2010

PROTECTIVE ORDER REGARDING PREFILED TESTIMONY

I. INTRODUCTION

On February 24, 2010, , Northern New England Telephone Operations LLC, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, Enhanced Communications of Northern New England, Inc., and FairPoint Vermont, Inc. (collectively, "FairPoint"), filed a Motion for Confidential Treatment of Prefiled evidence concerning the prefiled testimony of FairPoint witness Alfred C. Giammarino and exhibits sponsored by FairPoint witnesses Jeffrey W. Allen, Alfred C. Giammarino, and Vicky Weatherwax. Specifically, FairPoint states that the prefiled testimony and exhibits contain confidential information that is competitively sensitive and should be maintained as confidential. FairPoint submitted averments to support its request for confidentiality.

No other party opposed FairPoint's motion or filed comment.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that FairPoint has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant FairPoint's motion for a protective order.

To promote full public understanding of the basis for its decisions, this Board has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹ Generally, however, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.²

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?³

FairPoint asserts that the testimony and exhibits should be kept confidential for the following reasons:

- Several exhibits relate to the status of work on FairPoint's Next Generation Network and would tend to disclose FairPoint's business plans and strategies;

1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. See e.g., *Entergy Docket*, Order of 3/29/02 at 2.

- Portions of testimony and exhibits relate to FairPoint's confidential business information and financial projections that FairPoint asserts would result in cognizable harm to FairPoint; and
- Some exhibits contain information relating to FairPoint's internal systems, intellectual property, and business plans and strategies that are competitively sensitive.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that the redacted information is commercial information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information. Therefore, FairPoint has made a *prima facie* showing that confidential treatment is warranted for the information at issue, and we grant FairPoint's motion for a protective order.

In addition, we have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect FairPoint to do the same here. At this time, we are not explicitly ruling that any specific information should remain confidential indefinitely. Parties retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or removed completely from protection as confidential information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by FairPoint (as set out in an attachment to this Order) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any

employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and any Protective Agreement approved in this Docket, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 2nd day of April, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 2, 2010

ATTEST: s/ Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)